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## United States District Court Central District of California

PROGRESSIVE SEMICONDUCTOR  
SOLUTIONS LLC,

Plaintiff,

v.

QUALCOMM TECHNOLOGIES, INC.,

Defendant.

Case No. 8:13-cv-01535-ODW(JEMx)

### **ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED PLEADING [59]**

Before the Court is Plaintiff Progressive Semiconductor Solutions LLC's Motion for Leave to File Third Amended Complaint. (ECF No. 59.) A nearly identical motion has been filed in the related case *Progressive Semiconductor Solutions LLC v. Marvell Semiconductor, Inc.*, No. 8:14-cv-00330-ODW(JEMx). Progressive seeks leave to add allegations of indirect patent infringement. For the reasons discussed below, the Court **GRANTS** the Motion.<sup>1</sup>

Leave to amend a complaint should be "freely given when justice so requires." Fed. R. Civ. P. 15(a)(2). The decision whether to permit leave to amend rests in the sound discretion of the trial court. *California v. Neville Chem. Co.*, 358 F.3d 661, 673 (9th Cir. 2004). In determining whether leave to amend should be granted, at least

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<sup>1</sup> After carefully considering the papers filed in support of and in opposition to the Motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 four factors are considered: (1) undue delay; (2) bad faith or dilatory motive;  
2 (3) prejudice to the opposing party; and (4) futility of amendment. *Ditto v. McCurdy*,  
3 510 F.3d 1070, 1079 (9th Cir. 2007); *Foman v. Davis*, 371 U.S. 178, 182 (1962).

4 Defendant Qualcomm Technologies, Inc. (“QTI”) opposes the Motion, arguing  
5 that the indirect-infringement allegations are premised on the same information  
6 available to Progressive at the outset of the litigation. According to QTI,  
7 Progressive’s proposed amendment is not based on new facts since Progressive has  
8 not received any discovery. Also, QTI claims that Progressive delayed amendment,  
9 and allowing amendment would prejudice QTI by expanding the scope of discovery.  
10 Amendment would also be futile since the indirect-infringement allegations require  
11 international discovery, which QTI claims cannot be completed by the discovery  
12 deadline already set in this case.

13 The Court is unpersuaded by QTI’s arguments and finds that the lenient  
14 standard for amendment favors Progressive. First, there is no evidence of undue  
15 delay. While, Progressive was late in seeking leave to amend from this Court, the  
16 close of fact discovery in this case is more than six months away. Moreover, even  
17 QTI admits that discovery has only just begun. Likewise, the record lacks evidence of  
18 bad faith or dilatory motive. Progressive indicates that it sought expert advice  
19 regarding the facts and circumstances of its case before seeking leave to add  
20 allegations of indirect infringement. While QTI contends that it will be prejudiced by  
21 amendment, the prejudice it asserts—more expansive discovery—is an incident of any  
22 litigation. As long as Progressive’s allegations are brought in good faith, the burden  
23 of expanded discovery is not a proper basis for finding prejudice. Finally, at this stage  
24 of the litigation, this Court cannot say whether amendment is futile and accepts  
25 Progressive’s allegations as true. But this Court notes that it is generally not amenable  
26 to extending deadlines, so if Progressive requires additional time to conduct  
27 discovery, Progressive will be required to demonstrate good cause unrelated to  
28 amendment of the pleadings.

1 For these reasons, the Court **GRANTS** Progressive's Motion for Leave to File  
2 Third Amended Complaint. (ECF No. 59.) However, to the extent that Progressive  
3 seeks a modification of this Court's Scheduling Order, the Motion is **DENIED**.  
4 Progressive shall file the Third Amended Complaint **within 48 hours** of this Order.

5 **IT IS SO ORDERED.**

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7 June 16, 2014

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**OTIS D. WRIGHT, II**  
**UNITED STATES DISTRICT JUDGE**

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